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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 IGNACIO GONZALEZ, an individual,

13 Plaintiff,

14 v.

15 FOLEY FAMILY WINES, INC., a Delaware
16 Corporation,

17 Defendant.
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Case No.

**DEFENDANT FOLEY FAMILY WINES,
INC.'S NOTICE OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT ON THE
BASIS OF DIVERSITY JURISDICTION**

28 U.S.C. §§ 1332, 1441, 1446

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF IGNACIO GONZALEZ
3 AND HIS ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE THAT Defendant Foley Family Wines (“FF Wines”) hereby
5 removes the above-entitled action from the Superior Court of California, County of Napa (the
6 “State Court Action”), to the United States District Court for the Northern District of
7 California. Defendant bases this Notice of Removal (“Notice”) on 28 U.S.C. sections 1332,
8 1441, and 1446, and more specifically the following:

9 **I. STATEMENT OF JURISDICTION**

10 1. This Court has original jurisdiction over this action under the diversity of
11 citizenship statute. 28 U.S.C. § 1332(a). Section 1332 grants district courts original
12 jurisdiction over civil actions where the matter in controversy exceeds the sum or value of
13 \$75,000, exclusive of interest and costs, and the dispute involves citizens of different states.
14 This case meets the requirements of Section 1332 for removal and FF Wines hereby timely
15 and properly removes the State Court Action from the California superior court to this Court
16 through the filing of this Notice.

17 **II. VENUE**

18 2. Venue properly lies with the United States District Court for the Northern
19 District of California as the district embracing the location of the pending action. *See* 28
20 U.S.C. §§ 84(a), 1391, and 1441(a). Plaintiff Gonzalez filed the State Court Action in the
21 Superior Court, County of Napa and Plaintiff alleges that a significant portion of the events on
22 which he bases his claims arose in Napa County. (Complaint, ¶ 3 (attached as Exhibit A to the
23 accompanying Declaration of John F. Hyland in Support of Removal (the “Hyland Decl.”).)
24 Plaintiff further alleges that he resides in Napa, California. (Complaint, ¶ 2.)

25 3. Assignment to the San Francisco Division of the United States District Court
26 for the Northern District is proper pursuant to Rule 3-2 (d) of the Northern District of
27 California Local Rules because Plaintiff filed the State Court Action in Napa County Superior
28 Court and alleges both that he resides in Napa County and that a significant portion of the

1 events on which he bases his claims occurred in Napa County. (Complaint, ¶¶ 2, 3.)

2 **III. PLEADINGS, PROCESS AND ORDERS**

3 4. On October 13, 2023 Plaintiff filed a complaint in the Superior Court for the
4 County of Napa entitled *Ignacio Gonzalez v. Foley Family Wines, Inc., a Delaware*
5 *Corporation*, Case No. 23CV001301. Plaintiff asserts the following causes of action against
6 FF Wines: (1) unpaid wages and overtime; (2) failure to provide meal periods; (3) failure to
7 provide rest periods; (4) failure to provide accurate wage statements; (5) waiting time penalty
8 for nonpayment of wages; and (6) violation of Business and Professions Code § 17200.

9 5. Plaintiff seeks to recover through the causes of action asserted in the Complaint
10 compensatory damages, general and special damages, statutory damages and penalties,
11 temporary, preliminary, and permanent injunction, attorneys' fees and costs of suit, liquidated
12 damages, pre-judgment interest on any damages and other unspecified legal and equitable
13 relief. (Complaint, 7:24-8:5.) Plaintiff seeks damages in an amount no less than \$500,000.
14 (Complaint, ¶ 1.)

15 6. Plaintiff served Defendant FF Wines on October 23, 2023. (Hyland Decl., ¶ 4.)

16 7. Defendant FF Wines filed its answer to the Complaint on November 9, 2023,
17 and served the answer on November 9, 2023. (Hyland Decl., ¶ 4, Exhibit B.)

18 8. Since Plaintiff has not named or served any of the DOE defendants, they need
19 not join or consent to Defendants' notice of removal. 28 U.S.C. § 1441(b)(“In determining
20 whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of
21 this title, the citizenship of defendants sued under fictitious names shall be disregarded.”); *e.g.*,
22 *Vargas v. Riley*, 2018 WL 2267731 *2 (N.D. Cal. May 17, 2018))(a party not yet served at the
23 time of removal need not join in the removal).

24 9. Plaintiff has not served on FF Wines any documents or pleadings other than the
25 summons and complaint in the State Court Action. (Hyland Decl., ¶ 3.)

26 10. Pursuant to 28 U.S.C. section 1446(a), FF Wines submits as Exhibit A to the
27 Hyland Declaration all process and pleadings served on FF Wines as of the date of this
28 removal.

1 **IV. TIMELINESS OF REMOVAL**

2 11. FF Wines timely filed this Notice under 28 U.S.C. section 1446(b)(3) as it has
3 filed within 30 days of the date of its receipt of the summons and complaint.

4 **V. DIVERSITY JURISDICTION EXISTS AS TO PLAINTIFF'S CLAIMS**

5 12. Diversity jurisdiction exists where the amount in controversy exceeds
6 \$75,000.00, exclusive of interest and costs, and involves a dispute between citizens of
7 different States. 28 U.S.C. § 1332(a)(1). Where diversity jurisdiction exists, a defendant may
8 remove a state court action to the United States District Court. 28 U.S.C. § 1441(a), (b).

9 **A. Plaintiff Is A Citizen Of California.**

10 13. For purposes of diversity jurisdiction, a person is a "citizen" of the state in
11 which he is domiciled. *See, e.g., Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th
12 Cir. 1983); *see also LeBlanc v. Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship
13 determined at the time the lawsuit is filed). A person's domicile is the place he resides with the
14 intention to remain or to which he intends to return. *See Kanter v. Warner-Lambert Co.*, 265
15 F.3d 853, 857 (9th Cir. 2001).

16 14. At the time Plaintiff commenced this action and at the time of removal he was a
17 citizen of California, residing in Napa, California. (Complaint at ¶ 2.)

18 **B. Defendant Allied Is A Citizen Of Delaware.**

19 15. For diversity purposes, a corporation "shall be deemed a citizen of any State by
20 which it has been incorporated and of the State where it has its principal place of business." 28
21 U.S.C. § 1332(c)(1).

22 16. Defendant Foley Family Wines, Inc. is a Delaware corporation incorporated
23 under the laws of that state and with its principal place of business in Las Vegas, Nevada.
24 (Hyland Decl., ¶ 2.)

25 **C. The Amount In Controversy In This Case Exceeds \$75,000.**

26 17. Plaintiff alleges in the Complaint that he "seeks damages in an amount no less
27 than \$500,000.00" (Complaint, ¶ 1) and the amount in controversy therefore exceeds the
28 jurisdictional minimum for diversity jurisdiction.

18. Given the above facts, this Court has original jurisdiction over Plaintiff's claims based on diversity of citizenship jurisdiction under 28 U.S.C. §§ 1332(a)(1) and 1441(a).

VI. NOTICE TO PLAINTIFF AND STATE COURT

19. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the Northern District of California, FF Wines will provide written notice of such filing to Plaintiff's counsel of record and will thereafter file a copy of the Notice of Removal with the Clerk of the Napa County Superior Court.

WHEREFORE, Defendant FF Wines respectfully requests that this Court retain jurisdiction of this matter for all further proceedings.

Dated: November 13, 2023

Rukin Hyland & Riggin LLP

By: /s/ John F. Hyland
John F. Hyland

Attorney for Defendant
Foley Family Wines, Inc.